

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36660

STATE OF IDAHO,)	2010 Unpublished Opinion No. 420
)	
Plaintiff-Respondent,)	Filed: April 6, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
PETER RICKARDS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Elmore County. Hon. Michael E. Wetherell, District Judge, Hon. David C. Epis, Magistrate.

District court's order dismissing intermediate appeal, affirmed.

Dr. Peter Rickards D.P.M., Twin Falls, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

LANSING, Chief Judge

Peter Rickards appeals the district court's dismissal of his appeal from the magistrate court's order withholding judgment upon a jury verdict finding Rickards guilty of trespassing and battery. We affirm.

I.

BACKGROUND

Rickards was charged with and found guilty by a jury of trespassing, Idaho Code § 18-7008(8), and battery, I.C. § 18-903. The magistrate withheld judgment and placed Rickards on unsupervised probation. Rickards appealed to the district court and argued, among other things, that the facts of his case did not support the guilty verdicts and that the trespass statute is unconstitutionally vague as applied to his conduct. He also requested that the district court either waive his fees for production of a trial transcript or that it rule solely on his constitutional arguments as questions of law. Finding that a transcript was required to resolve Rickards' appellate issues, the district court ordered Rickards to furnish a copy at his own expense.

Rickards was warned that failure to timely pay the transcript fee could result in sanctions, including dismissal of the appeal.

Subsequently, Rickards filed a motion titled, “Request for Relief--Motion for Waiver of Transcript Fee or Ruling on Law Without Transcript” wherein he again asked the district court to either waive the transcript fee, citing financial hardship, or rule on only “the [c]onstitutional aspect of the law.” The district court denied Rickards’ motion, stating that Rickards had not provided the court with any evidence to show that he was unable to pay for the transcript and that it could not rule on Rickards’ constitutional claims without a transcript because the void-for-vagueness-as-applied issue would involve factual determinations. The court again ordered Rickards to pay the court reporter’s fee for preparation of a trial transcript within a specified time. Rickards did not pay the transcript fee and the district court consequently dismissed his appeal pursuant to Idaho Criminal Rule 54.13. Rickards now appeals from that dismissal order. In his opening appellate brief, Rickards asserts multiple issues on appeal but none address the district court’s dismissal of his appeal for failure to pay the transcript preparation fee.¹

II.

ANALYSIS

The district court dismissed Rickards’ appeal pursuant to I.C.R. 54.13, which states that if a party fails to timely comply with a “step in the appellate process,” such failure may be grounds “for . . . action or sanction as the district court deems appropriate, which may include dismissal of the appeal.” Upon the appeal of a decision rendered by a district court acting in its intermediate appellate capacity, this Court directly reviews the district court’s decision. *Crump v. Bromley*, 148 Idaho 172, 173, 219 P.3d 1188, 1189 (2009); *In re Doe*, 147 Idaho 243, 248, 207 P.3d 974, 979 (2009). Therefore, the only issue that could properly be raised before this Court is

¹ Instead, Rickards argues the substantive issues he would have argued in the district court had his appeal not been dismissed. The State succinctly summarizes these issues on page four of its respondent’s brief:

(1) Idaho Code §§ 18-7008(8) and 18-7029 are unconstitutionally vague; (2) [Rickards’] conduct was not unlawful under I.C. § 18-7008(8); (3) the police officers did not properly warn him before he was arrested; (4) his First Amendment rights were violated; (4) [sic] the police officers present at the time of his arrest violated [I.C.] § 18-3201 by allegedly destroying audio records; (5) his subpoenas were not properly executed or enforced; (6) there was insufficient evidence for his conviction of battery; (7) his requests for criminal prosecution of [others] were unlawfully refused; and (8) his motion for a new trial was incorrectly denied.

whether the district court erred in dismissing Rickards' appeal due to his failure to pay for preparation of a transcript within the court-ordered deadline. We note that appeals may be dismissed because of substantial defects that render a proper disposition of the case on appeal impossible. *Bernard v. Roby*, 112 Idaho 583, 589, 733 P.2d 804, 810 (Ct. App. 1987). In the absence of an adequate record to decide a case, or a sufficient reason for failure to produce a record, an appellate court may summarily affirm. *Id.* at 588, 733 P.2d at 809 (citing *State ex rel. Hodges v. Hodges*, 103 Idaho 765, 653 P.2d 1177 (1982)). *See also Garcia v. Pinkham*, 144 Idaho 898, 900, 174 P.3d 868, 870 (2007) (holding that the appellant has the burden to prove error and finding that the transcript provided on appeal was insufficient to allow review); *Fritts v. Liddle & Moeller Const., Inc.*, 144 Idaho 171, 174, 158 P.3d 947, 950 (2007) (holding that review of fact-dependent claims was not possible because the petitioner had failed to provide an adequate record and finding that in such a case a presumption arises that the evidence supported the lower court's decision).

Rickards has not presented in his opening appellant's brief an issue challenging the district court's dismissal of his appeal for Rickards' failure to provide a transcript. Instead, Rickards' opening brief presents only substantive arguments challenging the guilty verdict and the constitutionality of I.C. § 18-7008(8). In his reply brief, Rickards does present argument that the district court erred in requiring him to pay for the transcript on appeal. However, this Court does not consider issues raised for the first time in a reply brief. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 211, 159 P.3d 840, 848 (2007). "A reviewing court looks only to the initial brief on appeal for the issues presented because those are the arguments and authority to which the respondent has an opportunity to respond in the respondent's brief." *Id.* (quoting *Suitts v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005)).

Even assuming that some comments in Rickards' opening brief were sufficient to raise an issue challenging the district court's refusal to waive the transcript fee, his contentions are without merit. Rickards asserts that the district court erroneously refused to waive the transcript fee because the court did not read Rickards' complete notice of appeal wherein he asked for a fee waiver or disposition solely on questions of law, as illustrated by the judge characterizing Rickards' notice as eleven pages in length. However, this contention is a misinterpretation of the district court's words in its order denying defendant's request for waiver. Although the district court did say Rickards' notice of appeal had an eleven-page body, in the context of discussing whether a fee waiver was requested, the district court went on to discuss the remainder of the

document. Specifically the district court said, “although a fee waiver was not mentioned in the 11-page body of his Notice, the subject is mentioned in what appear to be emails the Defendant had posted and attached to the final pages of his Notice.” Thus, Rickards’ assertion--that the district court’s characterization of his notice of appeal as an eleven-page document leads to the conclusion that the district court failed to read his notice of appeal--is not supported in the record.

Rickards also points out that he requested, if the district court would not waive the transcript fee, that it consider his argument that I.C. § 18-7008(8), the statute under which he was prosecuted for trespassing, is void for vagueness as applied to Rickards’ conduct. We acknowledge that where the appellate record is sufficient to resolve some issues, such as pure questions of law, those issues should be decided on the merits even if other issues cannot be addressed due to the absence of a transcript. *See Bernard*, 112 Idaho at 589, 733 P.2d at 810; *Clark v. Clark*, 125 Idaho 173, 174, 868 P.2d 501, 502 (Ct. App. 1994). The district court did not err here, however, in holding that the constitutional issue could not be addressed without a trial transcript because Rickards argues that the statute was void for vagueness *as applied* to his case.² Consideration of the issue thus requires reference to the evidence presented at trial, which is impossible without a transcript. This is well illustrated by the fact that Rickards’ brief is full of representations regarding testimony presented at trial, but without any appellate record to substantiate those representations. The district court did not err in dismissing Rickards’ appeal due to his failure to provide a transcript necessary for appellate review.

III.

CONCLUSION

Rickards has shown no error in the district court’s dismissal of the intermediate appeal. Therefore, the order of the district court dismissing Rickards’ appeal from the judgment of the magistrate is affirmed.

Judge GUTIERREZ and Judge GRATTON **CONCUR.**

² As Rickards acknowledges, the Idaho Supreme Court has held that section 18-7008(8) is not unconstitutional on its face. *State v. Korsen*, 138 Idaho 706, 712-13, 69 P.3d 126, 132-33 (2003).